

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Stephen McAlpine, Chair
Paul F. Lisankie
Rebecca L. Pauli
Robert M. Pickett
Janis W. Wilson

In the Matter of Consideration of Repeal of) R-18-001
Alaska Universal Service Fund Regulations)

COMMENTS OF GCI

I. Introduction

By Order R-18-001(1), dated January 12, 2018, the Commission issued proposed regulations that would terminate the Alaska Universal Service Fund (AUSF). That Order established a schedule for the filing of comments on the proposed regulations, and GCI Communication Corp. d/b/a General Communication, Inc. and GCI (GCI), submits these comments in accordance with that schedule.

GCI supports the Consensus Proposal that is being submitted to the Commission by the Alaska Telephone Association (ATA) along with comments explaining and supporting the Consensus Proposal. The primary purpose of these comments by GCI is not to provide further argument in support of the Consensus Proposal. Instead, in these comments GCI will focus on the changes proposed by the Commission and will explain why those changes are ill-advised and incomplete and, as now written, illegal. The

1 regulations, as proposed, fail to include changes to other regulations, such as 3 AAC
2 48.430, Jurisdictional Separations (“Separations”), and to the Alaska Intrastate
3 Interexchange Access Charge Manual (“Manual”) that are absolutely necessary
4 additions to the proposed regulations. Without the additional changes to regulations
5 and the Manual, local exchange carriers, including fully regulated local exchange
6 carriers that do not face local exchange competition, will have no opportunity
7 whatsoever to recover their regulated intrastate revenue requirement. Large portions of
8 the revenue requirement of those companies will be unrecovered from local rates,
9 access charges, or the (discontinued) AUSF. This result is clearly illegal.¹

12 II. Discussion

13 Many of the incumbent local exchange carriers in Alaska remain fully regulated
14 by the Commission. Those companies serve areas that have not been designated
15 “competitive” and the companies are still regulated as “dominant” carriers, requiring
16 them to submit tariff filings and gain approval of the Commission for any increase in
17 local rates.² Those companies are also “pooling companies” of the Alaska Exchange
18 Carriers Association, with their access charges and access charge revenue requirement
19 also regulated by the Commission.³

23 ¹ It is fundamental “black letter” law that utilities are entitled to a reasonable opportunity to recover their
24 prudently-incurred costs and to earn a fair and reasonable rate of return on investment. *Federal Power
25 Commission et al v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) and *Bluefield Water Works and
Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923)

25 ² See 3 AAC 53.205, 3 AAC 53.220, and 3 AAC 48.240(c)

26 ³ All incumbent local exchange carriers are pooling companies unless and until a competitive local exchange
27 carrier is authorized to serve the same area. Manual, Section 001(d)

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2 Like every utility regulated by the Commission, these companies have a
3 regulated “revenue requirement” and a legal right to an opportunity to earn that revenue
4 requirement, including a reasonable rate of return.⁴ Determination of the revenue
5 requirement for local exchange carriers is, however, more complex than for most other
6 utilities because the revenue requirement is divided between the interstate and intrastate
7 jurisdictions and the intrastate portion of the revenue requirement is collected from
8 multiple sources as specified by detailed regulations governing how much is collected
9 from each source. Those sources include the local ratepayers of each company, access
10 charges from interexchange carriers, and support from the AUSF. Those detailed rules
11 include Separations, all of the Manual, and significant portions of the regulations on the
12 AUSF, 3 AAC 53.300 – 399. The regulations proposed by the Commission would
13 discontinue the recovery of a portion of the local exchange carrier revenue requirement
14 from the AUSF but do not provide any means from the carriers to recover that lost
15 revenue from another source.
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18 This issue is best illustrated by what is known as the “carrier common line” cost
19 that is, at present, recovered by regulated carriers from a combination of the Network
20 Access Fee (“NAF”)⁵ and the carrier common line, or “CCL” support program of
21 AUSF. CCL support from the AUSF is entirely a cost recovery mechanism for
22 regulated carriers. In fact, regulations provide that carriers submit, on a bi-annual basis,
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26 ⁴ See footnote #1.

27 ⁵ See Section 109 of the Manual.

1 a complete revenue requirement study that justifies the amount of CCL support that that
2 the carrier is entitled to receive.⁶
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4 CCL costs represent 20% of the total cost of all of a local exchange carrier's
5 fiber and copper wires, and associated facilities.⁷ These are the wires that connect local
6 exchange subscribers to the carrier's switch. The amount of the CCL revenue
7 requirement of carriers is substantial.⁸
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9 Until the Commission implemented "access charge reform" in Docket R-08-003,
10 the portion of the CCL revenue requirement not covered by the NAF was collected in
11 access charges from interexchange carriers. The regulations adopted in R-08-003
12 increased the NAF and transferred recovery of the remaining cost from access charges
13 to AUSF CCL support.⁹ Although the source of recovery changed at that time, CCL
14 cost remains an actual verified cost of the carrier and CCL support is the mechanism
15 that recovers that actual, proven, verified component of the local exchange carriers'
16 revenue requirements.
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18 If the Commission eliminates the current cost recovery mechanism for these
19 CCL costs, it must, as a matter of law, provide local exchange carriers an alternative
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21 ⁶ Section 003 of the Manual provides for filings that include, under Section 004, determination of Carrier
22 Common Line costs, and Section 005(c) provides that the CCL costs are assessed to the AUSF. Section 701(b)
23 provides that each carrier shall submit revenue requirement studies in alternate years. The Commission has, by
24 order, waived the filing requirement for the past several years.

25 ⁷ 3 AAC 48.430(d)

26 ⁸ For example, the CCL current revenue requirement of UUI is over \$2 million.

27 ⁹ This reform, removing CCL costs from access charges, resulted in substantial reductions in long distance rates
and put an end to the "rate disparity" between interstate and intrastate long distance rates that had long been a
source of complaints in Alaska. Nonetheless, Staff opines in its memorandum that it does not believe achieving
rate parity in exchange for an increased AUSF assessment "was a particularly fair trade-off." Staff provides no
facts or argument in support of this opinion and GCI disagrees. Consumers in Alaska can now make intrastate
long distance calls at rates at parity with interstate rates. This is true even for calls between two remote villages
served by satellite earth stations. A better deal for consumers cannot be found.

1 opportunity to recover those costs. Failure to do so would make it impossible for local
2 exchange carriers to earn their authorized revenue requirement, much less a return on
3 that revenue requirement.¹⁰

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5 The current cost recovery method is formalized in both regulations and in the
6 Manual. Separations, 3 AAC 48.430, defines the portion of the local exchange carrier
7 costs that comprise CCL, the Manual provides that the costs not recovered by the NAF
8 are paid by the AUSF¹¹, and then the regulations on AUSF that are proposed for repeal
9 further provide for payment of the CCL costs from the AUSF¹².

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11 The problem with the regulations proposed by the Commission is that they
12 repeal the regulations on AUSF, but do not propose changes to the other two areas
13 where CCL costs are addressed, Separations and the Manual. That includes the failure
14 to specify where and how local exchange carriers will be allowed an opportunity to
15 recover the CCL costs that are no longer recovered from AUSF.

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17 Resolving these additional issues presents the Commission with very difficult
18 choices. The options available are 1) amending Separations and the Manual to allow

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20 ¹⁰Several commissioners have expressed concern that carriers have not filed recent revenue requirement studies
21 and that the Commission has no way of knowing whether or not carriers are now over-earning or under-earning.
22 As to CCL for pooling companies, this has occurred because the Commission has waived the annual filing
23 requirements. Nonetheless, GCI's incumbent local exchange carrier affiliates have completed basic revenue
24 requirement studies and the results demonstrate that all three are under-earning significantly on both local
25 operations and intrastate operations as a whole. For example, United Utilities, Inc., has a local revenue
26 requirement of \$5.5 million but revenue of only \$3.78 million; it has an intrastate access revenue requirement of
27 \$5.5 million but revenue of only \$4.2 million. In total, the three incumbent local exchange carrier affiliates are
under-earning their intrastate revenue requirement by over \$2.7 million. The Commission's proposed regulations
would make the situation substantially worse by increasing the total under-recovery by an additional \$2.8 million.
GCI doubts other local exchange carriers are faring any better.

¹¹"Carrier Common Line charges not otherwise assessed under (a) of this section will be assessed to the Alaska
Universal Services Administrative Company (AUSAC) for reimbursement from the Alaska Universal Service
Fund (AUSF)." Section 005(c) of the Manual. See also Section 104 of the Manual.

¹² 3 AAC 53.350(a)(5).

1 recovery of CCL costs from local rates; 2) amending Separations and the Manual to
2 allow recovery of CCL costs from access charges¹³; 3) allowing recovery of CCL costs
3 from a mix of the foregoing; or 4) amending Separations and the Manual and
4 deregulating local rates to allow local exchange carriers complete freedom to raise
5 rates. Whatever choice the Commission makes will result in the very real possibility of
6 either large increases in local exchange rates, large increases in access charges and
7 resulting long distance rates, or a mix of the foregoing. As GCI explained in prior
8 comments, reassigning CCL costs to access charges would result in AECA's
9 originating access rates increasing from under 4 cents per minute to over 25 cents per
10 minutes.¹⁴ Current intrastate long distance rates¹⁵ could not survive such an increase in
11 access charges and long distance carriers would be forced to increase rates to
12 consumers. Alternatively, assigning all CCL costs to the local exchange would, in the
13 case of GCI's affiliates UUI and Yukon result in local exchange rates of \$50-60.¹⁶
14 While GCI agrees with the Commission that the current AUSF assessment is
15 unreasonably high and, for that reason, GCI supports the Consensus proposal to cap the
16 assessment at 10%, GCI is not aware of any significant number of consumer complaints
17 about the level of the current assessment. GCI believes, however, that consumers
18 would react vocally to the large increases in local or long distance rates that would have
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24 ¹³ GCI strongly opposes this option and observes that this option would then require the repeal of other
25 regulations, such as the regulation that required long distance carriers to reduce rates after access charge reform.

26 ¹⁴ Reply Comments of GCI, Attachment A, Docket I-17-001 (December 14, 2017)

27 ¹⁵ The current "basic" rate for residential customers who do not select a calling plan is 10 cents per minute. The
rate for customers who select a calling plan can be much lower, depending on their calling volume.

¹⁶GCI's Response to Question, Attachment (C), Docket I-17-001. (November 30, 2017)

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2 to occur to recoup lost CCL support, complaining in great numbers to both carriers and
3 the Commission.

4 It is not sufficient for the Commission to proceed with its current proposal to
5 repeal the regulations on AUSF with the intent of addressing these difficult issues at a
6 later time. The changes necessary to allow local exchange carriers an opportunity to
7 recover the revenue lost from the repeal proposal need to go into effect at the same time
8 as repeal. Under the repeal proposed by the Commission, AUSF support would end no
9 later than July 31, 2019, and, more likely, January 1, 2019 or earlier.¹⁷ It is highly
10 unlikely that the Commission will be able to conclude this proceeding, then open and
11 conclude additional proceedings on these difficult issues, plus secure Department of
12 Law review and filing with the Lt. Governor, before the AUSF support disappears.¹⁸
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14 More fundamentally, it would be unreasonable for the Commission to terminate
15 AUSF support without confronting the difficult question of how it will allow carriers to
16 recoup the lost revenue and which rates it will cause to increase dramatically. Without
17 confronting that question, the Commission cannot even know if it is reasonable to allow
18 such increases. But if it is unreasonable to allow such increases, the Commission
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22 ¹⁷ Order R-18-001(1) states, based on Staff's memorandum, that the Commission intends to reduce the AUSF
23 assessment to 0 six months before the effective date of the proposed regulations so that the fund will wind down
24 on the effective date. (Order R-18-001(1), p. 3). This reflects a fundamental misunderstanding of the current
25 situation and regulations. Unless the AUSF accumulates a surplus before the assessment is reduced to 0, all
26 AUSF support would end as soon as the assessment is cut to 0. Based on current receipts and payments, it is more
27 likely that the AUSF will actually be in arrears before the proposed date for reducing the assessment to 0, meaning
that AUSF support would end some number of months before the assessment is reduced to 0.

¹⁸ This is particularly true because amendments to the Manual require, first, notice, comment, and adoption of the
changes to the Manual and, then, notice, comment, and adoption of the regulation that adopts the Manual, 3 AAC
48.440.

1 cannot terminate the existing source of revenue. These issues need to be addressed
2 simultaneously.
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4 As the Commission weighs the question of whether to discontinue CCL support,
5 the Commission should be aware that CCL support indirectly furthers one of the
6 Commission's off-stated goals, namely the support of Broadband services. As
7 discussed above, CCL costs are the cost of the cable, wires, and other facilities that
8 connect a customer's home or business to the local exchange carrier central office.
9 Those cables, wires, and other facilities provide voice communications, but those exact
10 same cables and wires also provide Broadband internet services.¹⁹ Thus, the current
11 AUSF program, through CCL support, provides significant support for the facilities that
12 local exchange carriers use to provide Broadband service.
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14 All of the foregoing legal issues with the Commission's proposal apply, in equal
15 measure, to the proposal to eliminate DEM weighting support. DEM weighting is, like
16 CCL, based on the revenue requirement of the local exchange carrier recipients and
17 subject to an annual filing and approval process.²⁰ If the costs now recovered from
18 DEM weighting support are no longer recovered from that support, the cost will have to
19 be reassigned, through changes in Separations and the Manual, to the local exchange
20 jurisdiction. As explained in previous comments, this could result in an additional local
21 rate increase for consumers of UUI and KUC of \$21 and \$11 respectively, on top of the
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25 ¹⁹ In the case of incumbent local exchange carriers, this is generally DSL service.

26 ²⁰ "The commission will determine the universal service support required for DEM weighting for a pooling
company as part of the annual access charge process for a pooling company." 3 AAC 53.350(b)

1 increase to recover CCL costs, bringing the possibility of local rates of over \$80 in the
2 case of UUI and \$50 in the case of KUC.²¹

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4 The same problems also exist for CCL support for non-pooling local exchange
5 carriers in competitive markets.²² The computation of CCL support in competitive
6 markets is based on a per line amount determined from a verified revenue requirement,
7 multiplied by the actual number of lines served by each carrier.²³ It is GCI's belief that
8 such a system allows carriers an "opportunity" to recover their revenue requirement by
9 winning, in the competitive market, the necessary number of customers. However, if
10 CCL support ended and the cost not reassigned elsewhere, there would be no possibility
11 of recovering the revenue requirement.²⁴

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13 For all of these reasons, GCI urges the Commission not to proceed with its
14 proposal to terminate the AUSF program. GCI is confident that if the Commission
15 proceeds down this path, nothing will be accomplished. The repeal of the program
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18 ²¹ GCI's Response to Question, Attachment (C), Docket I-17-001. (November 30, 2017)

19 GCI uses the words "could" and "possibility" because it is doubtful that the market would allow UUI and KUC to
20 raise rates to this level. However, that simply creates a different problem. As noted above, UUI and KUC are
21 already earning a rate of return of zero. Ending support, without the ability to raise rates to recoup the support,
22 will put UUI and KUC further "in the red", stifling investment in new and improved facilities.

23 ²² An important distinction is made here regarding CCL in competitive markets and COLR support in competitive
24 markets. The argument GCI is making is in regard to CCL Support, not COLR support.

25 ²³ This CCL amount is based on the revenue requirement that existed in the past, when competition began.

26 Although the Commission has expressed some frustration at the fact that revenue requirements are not current,
27 GCI asks the Commission to consider whether that might be a good thing rather than a bad thing. GCI asks
whether any of the other utilities that the Commission regulates based on a "cost plus", rate base/rate of return
methodology have had rates and revenue requirement go down over time. GCI believes strongly that if carriers
had been able to come in each year and demonstrate a higher revenue requirement, and therefore gain more AUSF
support, that is exactly what they would have done.

²⁴ The rate flexibility provided to competitive carriers by 3 AAC 53.243 is not sufficient to allow carriers an
opportunity to earn the revenue requirement. Subsection (h) allows the Commission to disapprove a rate that is
not reasonable. Reasonableness would be determined, at least in part, based on revenue requirement and, without
an amendment of Separation and the Manual, the local exchange revenue requirement would not include costs
now recovered from CCL support because those costs are not assigned to the local exchange.

1 would be stayed and ultimately invalidated in the courts, returning the law, and the
2 current assessment, to the status quo ante.

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4 GCI urges the Commission to, instead, seize the opportunity to make
5 fundamental changes in the AUSF program without “throwing out the baby with the
6 bathwater.” The ATA Consensus presents the Commission with such an opportunity.
7 While the Commission may not like each and every component of the Consensus, it is a
8 package that resolves many of the issues causing concern for the Commission,
9 including lowering the assessment to a maximum of 10%. At the least, the Consensus
10 forms the basis of an ultimate resolution that should be subject to further comment and
11 discussion.
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13 III. Conclusion

14 For the foregoing reasons, GCI urges the Commission to abandon its current
15 proposal. GCI urges the Commission to adopt the Consensus submitted by the ATA as
16 a reasonable solution to the current problems with the AUSF that will accomplish many
17 of the Commission’s goals, including prompt and significant reduction of the current
18 assessment to consumers.
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20 RESPECTFULLY SUBMITTED,
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GENERAL COMMUNICATION, INC.

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